

AMENDED IN ASSEMBLY JUNE 11, 2013

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 29, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 1, 2013

## SENATE BILL

**No. 458**

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**Introduced by Senator Wright**

**(Coauthor: Senator Yee)**

(Coauthors: Assembly Members *Bradford*, Brown, Hall, Jones-Sawyer,  
V. Manuel Pérez, Rendon, and Ting)

February 21, 2013

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An act to add Section 186.34 to the Penal Code, relating to gangs.

### LEGISLATIVE COUNSEL'S DIGEST

SB 458, as amended, Wright. Gangs: statewide database.

Existing law, the California Street Terrorism Enforcement and Prevention Act, makes it unlawful to engage in criminal gang activity, including actively participating in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and willfully promoting, furthering, or assisting in any felonious criminal conduct by members of the gang.

This bill would require, prior to a local law enforcement agency designating, or submitting a document to the Attorney General's office for the purpose of designating, a person as a gang member, associate, or affiliate in a shared gang database, as defined, the local law enforcement agency to ~~notify~~ *provide written notice to* the person and his or her parent or guardian of the designation and the basis for the

designation if the person is under 18 years of age. *The bill would authorize the person or his or her parent or guardian to submit written documentation contesting the designation and would require the local law enforcement agency to provide written verification of its decision within 60 days.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 186.34 is added to the Penal Code, to  
2 read:

3 186.34. (a) For purposes of this section, “shared gang  
4 database” shall mean any database that allows access for any local  
5 law enforcement agency and contains personal, identifying  
6 information in which a person may be designated as a suspected  
7 gang member, associate, or affiliate, or for which entry of a person  
8 in the database reflects a designation of that person as a suspected  
9 gang member, associate, or affiliate.

10 (b) To the extent a local law enforcement agency elects to utilize  
11 a shared gang database, as defined in subdivision (a), prior to a  
12 local law enforcement agency designating a person as a *suspected*  
13 gang member, associate, or affiliate in a shared gang database, or  
14 submitting a document to the Attorney General’s office for the  
15 purpose of designating a person in a shared gang database, or  
16 otherwise identifying the person in a shared gang database, the  
17 local law enforcement agency shall, if the person is under 18 years  
18 of age, ~~notify~~ *provide written notice* to the person and his or her  
19 parent or guardian of the designation and the basis for the  
20 designation.

21 (c) *Subsequent to the notice described in subdivision (b), the*  
22 *person to be designated as a suspected gang member, associate,*  
23 *or affiliate, or his or her parent or guardian, may submit written*  
24 *documentation to the local law enforcement agency contesting the*  
25 *designation. The local law enforcement agency shall review the*  
26 *documentation, and if the agency determines that the person is not*  
27 *a suspected gang member, associate, or affiliate, the agency shall*  
28 *remove the person from the database. The local law enforcement*  
29 *agency shall provide the person and his or her parent or guardian*  
30 *with written verification of the agency’s decision within 60 days*

1 of submission of the written documentation contesting the  
2 designation.

3 (d) The person to be designated as a suspected gang member,  
4 associate, or affiliate, or his or her parent or guardian, shall be  
5 able to request information as to whether the person has been  
6 designated as a suspected gang member, associate, or affiliate.

7 (e) The local law enforcement agency shall not disclose the  
8 location of the person to be designated as a suspected gang  
9 member, associate, or affiliate to his or her parent or guardian if  
10 the agency determines there is credible evidence that the  
11 information would endanger the health or safety of the minor.

12 (f) A shared gang database maintained pursuant to this section  
13 shall retain records related to the gang activity of the individuals  
14 in the database as follows:

15 (1) A record that has not been modified by the addition of new  
16 criteria to determine gang profile for a five-year period shall be  
17 purged. Individuals who are in custody shall be subject to the same  
18 purge policy under this paragraph.

19 (2) A record created by an agency shall not be purged pursuant  
20 to paragraph (1) if that record has been substantially modified by  
21 another end user agency. For the purpose of this subdivision,  
22 substantially modified means that gang member criteria is renewed  
23 or added to the subject's record or the subject has a new arrest  
24 record in his or her record.

25 (g) Nothing in this section shall require a local law enforcement  
26 agency to disclose any information protected under Section 1040  
27 or 1041 of the Evidence Code or Section 6254 of the Government  
28 Code.